

JOHN D. LA RUE

IBLA 82-1072

Decided August 26, 1982

Appeal from decision of Oregon State Office, Bureau of Land Management, denying the withdrawal of oil and gas lease offers OR 27825 and OR 28235.

Vacated and remanded.

1. Notice: Generally--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Stipulations

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of additional stipulations, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulations. Where there is no evidence that an offeror had actual knowledge of the stipulations at the time of filing, the offeror is not bound to accept the lease with the added stipulations.

APPEARANCES: John D. La Rue, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On May 7, 1982, the Chief, Branch of Lands and Minerals Operations, Oregon State Office, Bureau of Land Management (BLM), signed oil and gas leases OR 27825 and OR 28235 on behalf of the United States in response to offers from John D. La Rue. Lease OR 27825 was for 1,280 acres in T. 37 S., R. 18 E., Willamette meridian, Oregon; lease OR 28235 was for 7,674.52 acres in T. 40 S., R. 22 E. Each lease was subjected to additional stipulations as indicated by a stamped notation on the face of the lease. On May 13, 1982, BLM received withdrawals of these two lease offers, which by decisions of June 14 and 22, 1982, were denied because the offers had matured into leases before receipt of the withdrawals.

La Rue appealed, stating the additional stipulations had never been tendered to him for review and acceptance prior to issuance of the leases. He contends the stipulations do not fall within the ambit of 43 CFR 3109.4-2, and under the Board's holding in Emery Energy, Inc., 64 IBLA 285 (1982), the leases are not binding upon him and are without effect in the absence of his consent to the additional stipulations.

The special stipulations appended to OR 27825 include the standard stipulation for lands under jurisdiction of the Department of Agriculture, contemplated in 43 CFR 3109.4-2, and an additional stipulation of the Forest Service concerned with surface disturbance, protection of cultural and paleontological resources, and protection of endangered or threatened species. The special stipulations appended to OR 28235 include the same two stipulations as in lease OR 27825, plus a BLM surface disturbance stipulation and a Forest Service stipulation requiring no occupancy on SE 1/4 NW 1/4 sec. 31, T. 40 S., R. 22 E. (within the Deep Creek Camp Ground).

There is no indication in the files that the additional stipulations were presented to La Rue for his consent prior to their inclusion in the executed leases.

The situation here presented is very similar to that considered in Emery Energy, Inc., *supra*, where the question was whether appellant was adequately notified of the disputed stipulations prior to issuance of the leases. There is no question that the offers to lease (Form 3110-1, March 1977) submitted by appellant made no reference to the disputed stipulations when filed. 1/

Although reference to additional stipulations is made in the notice of availability in the case of simultaneous oil and gas lease applications, and in the notice of sale for competitive oil and gas leases, there is no Departmental regulation providing for notice of terms of leases issued in response to over-the-counter filings. As we said in Emery Energy, Inc.:

Accordingly, in the present case, where there is no evidence that appellant had actual knowledge of the stipulations, and

1/ Item 5(c) on the face of the offer to lease/lease form provides: "Offeror accepts as a part of this lease, to the extent applicable, the stipulations provided for in 43 CFR 3103.2." This is an outdated reference. The present citation is 43 CFR 3109.4-2. However, the substance of the regulation is the same, and its basic content is set forth under the comparable item 5(c) of the "Special Instructions" on the reverse side of the offer to lease/lease form as follows:

"Whenever applicable the stipulations referred to will be made a part of this lease and will be furnished the lessee with the lease when issued. The forms covering them with a brief description are as follows: 3102 Stipulations for lands where the surface control is under the jurisdiction [of] the Department of Agriculture; 3103-1 Lands potentially irrigable, lands within the flow limits of a reservoir site, lands within the drainage area of a constructed reservoir; 3500-1 Lands withdrawn for power purposes; and 3120-3 Wildlife Refuge, Game Range, and Coordination Lands. Whenever other stipulations are necessary, lessee will be required to agree to them before the issuance of the lease." (Emphasis added.)

where the public had not been informed by a duly promulgated regulation or other notice published in the Federal Register as to the stipulations required, we find that appellant did not have adequate notice of the disputed stipulations. Accordingly, we hold that the leases issued to appellant were without effect, in the absence of its consent to the additional stipulations. BLM should cancel the leases and refund the rentals advanced by appellant with its offers.

64 IBLA at 288.

So in these cases, BLM must cancel the leases OR 27825 and OR 28235 and refund the advance rentals submitted by appellant with his offers.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are vacated and the cases remanded for further action consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Franklin D. Arness
Administrative Judge

